



ARIZONA DEPARTMENT OF TRANSPORTATION
POLICIES AND PROCEDURES

MGT-14.01 DEPARTMENT-WIDE AGREEMENT
POLICY

Effective: July 1, 2003
Supercedes: None
Responsible Office: Deputy Director (602) 712-7550

Review: July 1, 2004
Transmittal: 2003-July
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1.01 PURPOSE

To provide Arizona Department of Transportation personnel with the policy, responsibilities and procedures for preparation and proper use of agreements between governments and between ADOT and the private sector.

1.02 EFFECTIVE DATE

The provisions of this policy/procedure become effective July 1, 2003. From that date forward, all new agreements or significantly amended agreements fall under the content, approval and information requirements stated herein.

1.03 SCOPE

All divisions of ADOT, acting under the authority and requirements of Arizona Revised Statutes 28-401, shall prepare written agreements when exercising joint powers common to political subdivisions of the State. In addition, there are several other statutes which authorize ADOT to enter into agreements, depending on the particular agreement. Exhibit 1 is a listing of the Title 28 statutes that authorize agreements.

Originators, meaning the originators of, and responsible parties for, agreements within each Division (ITD: Intermodal Transportation Division; MVD: Motor Vehicle Division; TPD: Transportation Planning Division; AERO: Aeronautics Division; and TSG: Transportation Services Group) will continue to administer and manage their own agreements.

Grants, leases and loans are included in the provisions of this policy/procedure.

This policy addresses three concepts, that of required content, proper approval of such agreements, and the necessity to provide identifying and financial information about certain agreements.

1.04 DEFINITIONS

[terms marked ITD are those used in the Intermodal Transportation Division]

ADVANTAGETM

The current ADOT accounting/reporting system.

AG

Attorney General

Agreement	Agreement is the general term used in this policy to apply to all types of agreements made with other state, county, city, tribal governments or with private sector organizations.
CE	Construction Engineering costs: CE includes contract administration and oversight of the construction.
ECS [ITD]	Engineering Consultant Section. ECS is the custodian of JPA data for ITD.
Grant	An agreement involving funds that are granted to an entity for a specific purpose. ADOT may act as a 'pass –through' agent for such funds.
HELP	Highway Extension and Expansion Loan Program
IGA -Intergovernmental Agreement	An agreement between political subdivisions, including cities, counties or any other governmental agency or political subdivision. Includes interagency agreements, i.e., agreements between agencies or departments of the State. The distinguishing features of an IGA are that it must be signed off by the legal officers for the state and the other government and it must be filed with the Office of the Secretary of State before it becomes a legal contract.
ISA – Inter-Service Agreement	ARS 11-952 (A) states that, "if authorized by their legislature or other governing bodies, two or more public agencies by direct contract or agreement, may contract for <i>services</i> or jointly exercise any powers." This would seem to indicate that an ISA is an IGA, and therefore must be filed with the Secretary of State, while following all of the other standard IGA procedures. If, however, the agreement for services is within the same budgetary unit, then it would not have to follow the IGA procedures.
JPA - Joint Project Agreement (ITD)	An agreement between parties for the joint exercise of powers to accomplish a task. A Joint Project Agreement is any intergovernmental agreement (IGA), or private sector agreement (PSA).
Lease agreement	An agreement by which an owner of real estate property (lessor) gives the right of possession to another (lessee), for a specified period of time (term) and for a specified consideration (rent).

Loan agreement	Loan agreements include funds administered by ADOT through the HELP (Highway Extension/Expansion Loan Program). Funds are loaned to other agencies and to ADOT for design and/or construction purposes.
MOU / MOA	Memo Of Understanding / Memo Of Agreement A preliminary document that serves as an "agreement to agree", listing as many particulars as are available during early stages of writing an IGA or other agreement.
PSA - Private Sector Agreement [ITD]	An agreement between the Department and another party other than a political subdivision, e.g., a corporation, a trust, etc.
RE	Resident Engineer
TRACS	TRansportation ACcounting System: The prior ADOT accounting system. Construction projects still bear a "TRACS" identifier number in the current ADVANTAGE TM system.
UA - Utility Agreement [ITD]	An agreement addressing the relocation or installation of various utilities incident to highway construction, which may or may not be between political subdivisions, and <u>is not subject to ARS 11-952</u> . Utility agreements require similar provisions as are outlined in this policy, but may be processed by Utilities and Railroad Services.

1.05 REQUIRED CONTENT OF AGREEMENTS

a. LEGAL REQUIREMENTS

- (1) With the exception of the categories of contracts listed below, all agreements must be approved by the Attorney General's (AG) Office. This includes all amendments to existing contracts, but does not include renewals that are provided for under the contract. The AG's Office should be consulted as soon as there is any question concerning the Department's authority to enter into any agreement.

- (2) Exemptions

The following contracts are exempt from the above requirements.

- (a) Contracts issued by the Procurement Office under the Procurement Code: There is no blanket requirement that all of these contracts must be approved by the AG's

Office. However, any changes to the Uniform Terms and Conditions must be approved by the AG's Office.

- (b) Highway construction contracts issued by contracts and specifications: Advice must be sought whenever there is a change to the "100's," sections of the Standard Specifications.
 - (c) Engineering Consultant contracts issued by Engineering Consultant Services: The AG's office must approve any changes to the form terms and conditions.
 - (d) Right-of-Way Acquisition Agreements: Right of Way should consult with the AG's Office to obtain approval of forms for common transactions, such as deeds, easements, and rights of entry. All disposal contracts should be reviewed.
 - (e) Highway Expansion & Extension Loan Program (HELP)
- (3) The AG's Office encourages the Department to consult the attorneys when any questions arise concerning the above categories. The AG reviewers are concerned with specific listings of the following items:
- (a) Authority - citing a specific ARS reference that allows a division to make such an agreement. See Exhibit 1.
 - (b) Funding availability and payment
 - 1 Examples: listing ADOT budget code or budgeted line item, federal funds, or the 5 year program line item. It is essential to list the full estimated or final cost for each agreement.
 - 2 The agreement should also include a "not to exceed" amount. If the scope of the project causes estimates to exceed the "not to exceed", then the agreement must be amended, including the "not to exceed" amount.
 - 3 Every agreement with a duration which extends beyond the end of the fiscal year must have a "fiscal funding out" clause. Therefore, if money is not appropriated for the project beyond the fiscal year, the agreement will be automatically deemed terminated unless clearly specified in statutes or the agreement, such as "the project is in the Five Year Construction Program." In addition, there should be included in most agreements a termination for convenience clause. This allows the Department to terminate for any reason without having to pay consequential damages.
 - 4 Use of lump sum agreements is discouraged. There should be a detailed listing of all line items in the pay estimate that makes up the total amount.
 - 5 Scope – Clearly describing what is to be done, by whom. This should include who, what, where, when, why and how. There may be different language regarding construction, maintenance, or transfer of funds.
 - 6 Allocation of responsibility and liability - If work is done wrong, who is responsible. Statements should address: "State will do...." And "Other entity will do...". Language may include references to: liability, insurance, or indemnification. The AG's office must approve any insurance liability or indemnification clause language in any agreement.

- 7 Term – the length of the contract, if applicable. Exit clauses could be included here, if applicable. Some contracts may be written for an indefinite period, but shall include a requirement for periodic reviews by both parties, annually unless it's within the five-year construction program.

(4) Legal Review

- (a) Form (Standardized) Agreements that have previously been approved by the AG's office: Many of the agreements ADOT enters into are standard, and only the public agencies (i.e. the parties), or amount of funds to be utilized will change. Under these circumstances, the AG's office need only review the agreement after it is finalized and ready for signature. If any changes are made to the standardized form, then the AG's office must review any of those changes.
- (b) Non-Uniform (Non-Standard) Agreements: In some instances, unusual circumstances will arise. When this occurs, the AG's office should be contacted immediately. This is particularly necessary when one or both of the parties are requesting a change to standard terms or conditions.

b. AGREEMENT REVIEW AND SIGNATURE FORM

It is required that a specific page be attached to each agreement for the purpose of recording or summarizing approval signatures. If an approval is recorded as a separate document, then the document is attached to the agreement and referenced on the form. An AG approval that is in the form of a stamped image should also be referenced on the summary. Exhibit 2 is provided as an example of an "AGREEMENT REVIEW AND SIGNATURE FORM".

c. RESPONSIBILITY MATRIX

A responsibility matrix must be integrated into every agreement. The matrix is to illustrate roles and responsibilities throughout the life of the agreement – from inception through execution to completion of the actions outlined in the agreement. The intent is to clearly illustrate the required role and responsibilities of each function and/or individual as the agreement's terms become solidified or completed.

The matrix will address:

- (1) Who is responsible ("who" may be identified as a person by name, but must always identify the person by title: examples: State Engineer, Aeronautics Engineer, project manager, etc.)
- (2) The actions that are to be taken by each person or organization at certain stages of the agreement. These actions may also be tied to percentages of completion of the agreement or to specified dates.
- (3) A summary for Financial Management Services of the final Construction Engineering costs (% of CE) to be billed to the entity shall be included in the matrix. This action should be noted in the responsibility matrix and done at the time the Resident Engineer or other individual signs the final acceptance letter for the project or agreement.

d. SPECIFIC 5 YEAR CONSTRUCTION PROGRAM RELATED ITEMS

If, during the draft agreement development process, any of the fields listed below are not filled in, they should be noted as "pending". The agreement should include the following (if applicable):

- (1) The program FY that the agreement is proposed being funded from (note Program line item if associated to a current 5 year program, and note program FY to FY)
- (2) The assigned Project TRACS Number
- (3) The Five Year Construction Program's Subprogram Description or Subprogram resource allocation code
- (4) Clear identification of items and specific work bid item numbers and specific limits of construction within an estimate to be charged to "other" party
- (5) A determination of a set % of CE for varying construction types of agreements. This number is expected to be between 8% and 15%. Estimated and final costs are to be noted later by the Resident Engineer. [See also para 1.05 c. (3)]

1.06 REVIEW AND APPROVAL PROCEDURES

a. In addition to reviews and approvals that take place within the originating division:

- (1) If the agreement is greater than \$10 million dollars, then;
 - (a) FMS (Financial Management Services) must review and provide signature on the the Agreement Review and Signature Form, noted hereafter as "the form". [See also para 1.05 b. and Exhibit 2]
 - (b) Director's Office must review and provide signature on the form.
- (2) If the agreement contains provisions for the lending or borrowing of money, then FMS must review and provide signature on the form.
- (3) If the agreement has any impact on a project in the current five year construction and facilities program or puts into the current program a new project or puts a project into a future five year construction and facilities program, then TPD must provide a review and signature on the form.

b. The Review Process for agreements which are reviewed by TPD, TSG, or Director's Office:

The form (see Exhibit 2) must include;

- (1) Lines for mandatory implemented comments
- (2) Lines for recommended comments
- (3) Date sent over to the Division or Director's office for review by originating division

- (4) Required date for review and comments back to the originating division
- (5) The review by these divisions should occur before the agreement goes to the AG office

1.07 INFORMATION SUBMISSION

Agreement originators and/or responsible parties shall enter the following log information about each agreement. The information shall be in the specified sequence, but may be in any form – of written text, such as excel, access, etc. The logs may be maintained in a public folder, accessible via the ADOT Intranet.

If additional information is desired to be placed in the log file by the originator, it may be added, but must be at the end of the required data. Some data fields may not apply to a given agreement – they can be noted as “NA”.

- (1) Number:
 - Type of agreement: IGA, ISA, etc (see Definitions in para 1.04)
 - CY: calendar year the agreement was initiated
 - Sequential number for the originating Division's agreements.
 - Division identifier: M: MVD; I: ITD; T: TPD; A: Aero; S: TSG.

An example of the number might be:

IGA 03 005 M, for an 'IGA' in calendar year 2003, the fifth one done by this division in 2003, Motor Vehicle Division

- (2) Agreement Parties involved: note the other agency or entity involved with the agreement.
- (3) Originator &/or Responsible party within the Division: i.e. who initiated the agreement: Name, phone number.
- (4) General Agreement Type: Is the agreement for maintenance, turnback, transfer of funds, loan, etc,
- (5) Note the Primary and Subprogram funding source (if applicable)
- (6) TRACS number: the entire TRACS number, which includes route, MP (milepost), county and TRACS Project number.
- (7) Payable dollar amount: what ADOT will pay (include key expected dates of payouts and amounts of each disbursement - to equal the total dollars paid).
- (8) Receivable dollar amount: what ADOT will receive (include key expected dates and amounts of receivables if broken into 'payments').
- (9) Amendment Indicator: Identify core reasons, with details as to why, such as financial adjustments, terms, language, scope, etc.

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(10) Estimated final execution date as to when the agreement will be totally done: month and year: i.e. actual completion date of work .

(11) Additional information such as BTS or accounting Activity code can be added here at the end.

(12) Review dates involved in the agreement

(13) Whether or not AG approval is required and has been received

The following statutes make reference to the State entering into an agreement with other governmental entities. (Originator of an agreement is to reference the applicable statutes for their agreements.)

ARIZONA REVISED STATUTES TITLE 28

CHAPTER 2: ADMINISTRATION

Agreements

28-401	Intergovernmental agreements
28-402	Intergovernmental agreements; ports of entry
28-403	Interstate agreements; commercial vehicle registration
28-404	Interstate agreements; fee and tax exemptions
28-405	Contract; civil penalty collection
28-406	Interstate agreements; dealer or manufacturer plates
28-407	Agreements with other jurisdictions; parking privileges

CHAPTER 3: TRAFFIC & VEHICLE REGULATION

Parking For Persons With Physical Disabilities

28-883	Agreements with other jurisdictions; reciprocity
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CHAPTER 20: STATE HIGHWAYS & ROUTES

Cooperative National Highway Aid Agreements

28-7341	Agreements between department and federal agencies
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CHAPTER 23: HIGHWAY BEAUTIFICATION

Advertising Regulation

28-7907	Agreement with secretary of transportation
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CHAPTER 25: AIRPORTS

Airports In General.

28-8420	Agreements; joint airport operations
28-8422	Adjoining state monies for airports

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Arizona Department of Transportation
AGREEMENT REVIEW AND SIGNATURE FORM

Instructions: This form is to be used for review and signatures for agreements. It is to be initiated by the appropriate Division and must bear the signature of the originator of the agreement or the agreement coordinator. All supporting data must accompany the form to ensure complete and rapid review and approval.

From:

() MVD () ITD () TSG () TPD () AERO

Originator:

Typed name, Title, Phone, and Mail Drop

Signature & Date

Agreement No. _____ Agreement with: _____

TRACS No. _____ County: _____

The following is submitted (and attached) in support of this request: (check which apply)

() Draft agreement for review and comment. () Final agreement for signature.

() Financial Log information. () Responsibility Matrix.

Review/Signature Processing

Sign in the appropriate column. Attach memo if "not recommended".

To: (List routing sequence in parentheses at left. Blank lines are available for additional routing or routing within a Division.)

For review by:	Name of Person Reviewing		Date of Review
	Recommended	Not Recommended	
() Financial Management Services _____			
() Transportation Planning Division _____			
() Director's Office _____			
() Attorney General _____			

For Agreements Reviewed by TPD, FMS or Director's Office (see para. 1.06, b.)

Mandatory Implemented Comments _____

Recommended Comments _____